

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 20, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 14, 2010

AMENDED IN SENATE APRIL 7, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1399

Introduced by Senator Leno

*(Principal coauthors: Assembly Members Bonnie Lowenthal and
Ammiano)*

February 19, 2010

~~An act to amend Section 3041 of, and to add Sections 2065 and 3550 to,~~
*An act to amend Section 3041 of, to add Section 2065 to, and to add
Title 2.3 (commencing with Section 3550) to Part 3 of, the Penal Code,*
relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1399, as amended, Leno. Parole: physically or cognitively debilitated or incapacitated inmates.

Existing law generally regulates the granting and conditioning of parole, and places the duty to monitor parolees on the Division of Adult Parole Operations. Existing law, the Victim's Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process.

This bill would provide that, except as specified, any prisoner who the chief medical officer *at a Department of Corrections and Rehabilitation facility* determines, based on the results of medical evaluations, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated shall be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Those provisions would not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute. The bill would require that parole placements and revocations pursuant to its provisions shall be made in accordance with the Victim's Bill of Rights Act of 2008: Marsy's Law. The bill would require a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for a prisoner to recommend that a prisoner be referred to the Board of Parole Hearings for consideration for medical parole if the physician believes the prisoner meets the medical criteria for medical parole. The bill would provide that the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.

Existing law generally provides for the duties and functions of the Department of Corrections and Rehabilitation. Existing law provides that the State Department of Health Care Services is designated as the state agency with full power to supervise every phase of the administration of health care services and medical assistance for which grants-in-aid are received from the federal government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws.

This bill would require the Department of Corrections and Rehabilitation to, among other things, *seek to* enter into memoranda of understanding with the Social Security Administration and the State Department of Health Care Services to facilitate prerelease agreements to help inmates initiate benefits claims, as specified ~~and~~. *The bill would require the state to pay the state share of Medi-Cal costs for inmates that have been granted medical parole and to assume responsibility as the payer of last resort for inmates who are granted medical parole*

who are not eligible for public insurance and who do not have the means to pay privately, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2065 is added to the Penal Code, to read:
2 2065. The Department of Corrections and Rehabilitation shall
3 complete all of the ~~following~~ tasks associated with inmates granted
4 medical parole pursuant to Section 3041 or ~~3550~~: *3550 that are*
5 *specified in this section. Subdivisions (b) to (d), inclusive, shall*
6 *apply only to the period of time that inmates are on medical parole.*
7 (a) The department shall *seek to* enter into memoranda of
8 understanding with the Social Security Administration and the
9 State Department of Health Care Services to facilitate prerelease
10 agreements to help inmates initiate benefits claims.
11 (b) ~~The department~~ *state* shall pay the state share of Medi-Cal
12 costs for inmates ~~that~~ *who* have been granted medical parole.
13 ~~(c) The department shall reimburse providers for the medical~~
14 ~~treatment and long-term care costs of inmates granted medical~~
15 ~~parole who have not retained medical insurance, at a rate no lower~~
16 ~~than the Medi-Cal rate until the point that a parolee retains alternate~~
17 ~~health care coverage.~~
18 (c) *The state shall assume responsibility as the payer of last*
19 *resort for inmates who are granted medical parole who are not*
20 *eligible for public insurance and who do not have independent*
21 *means to pay privately. As the payer of last resort, the state shall*
22 *reimburse providers for the medical treatment and long-term care*
23 *costs of these medical parolees at rates no lower than the Medi-Cal*
24 *rate until such time that these parolees are eligible for public*
25 *insurance or have independent means to pay privately.*
26 (d) ~~The department~~ *state* shall reimburse counties for the costs
27 associated with providing an inmate granted medical parole with
28 a public guardian.
29 SEC. 2. Section 3041 of the Penal Code is amended to read:
30 3041. (a) In the case of any inmate sentenced pursuant to any
31 provision of law, other than Chapter 4.5 (commencing with Section
32 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet
33 with each inmate during the third year of incarceration for the

1 purposes of reviewing the inmate's file, making recommendations,
2 and documenting activities and conduct pertinent to granting or
3 withholding postconviction credit. One year prior to the inmate's
4 minimum eligible parole release date a panel of two or more
5 commissioners or deputy commissioners shall again meet with the
6 inmate and shall normally set a parole release date as provided in
7 Section 3041.5. No more than one member of the panel shall be a
8 deputy commissioner. In the event of a tie vote, the matter shall
9 be referred for an en banc review of the record that was before the
10 panel that rendered the tie vote. Upon en banc review, the board
11 shall vote to either grant or deny parole and render a statement of
12 decision. The en banc review shall be conducted pursuant to
13 subdivision (e). The release date shall be set in a manner that will
14 provide uniform terms for offenses of similar gravity and
15 magnitude with respect to their threat to the public, and that will
16 comply with the sentencing rules that the Judicial Council may
17 issue and any sentencing information relevant to the setting of
18 parole release dates. The board shall establish criteria for the setting
19 of parole release dates and in doing so shall consider the number
20 of victims of the crime for which the inmate was sentenced and
21 other factors in mitigation or aggravation of the crime. At least
22 one commissioner of the panel shall have been present at the last
23 preceding meeting, unless it is not feasible to do so or where the
24 last preceding meeting was the initial meeting. Any person on the
25 hearing panel may request review of any decision regarding parole
26 for an en banc hearing by the board. In case of a review, a majority
27 vote in favor of parole by the board members participating in an
28 en banc review is required to grant parole to any inmate.

29 (b) The panel or the board, sitting en banc, shall set a release
30 date unless it determines that the gravity of the current convicted
31 offense or offenses, or the timing and gravity of current or past
32 convicted offense or offenses, is such that consideration of the
33 public safety requires a more lengthy period of incarceration for
34 this individual, and that a parole date, therefore, cannot be fixed
35 at this meeting. After the effective date of this subdivision, any
36 decision of the parole panel finding an inmate suitable for parole
37 shall become final within 120 days of the date of the hearing.
38 During that period, the board may review the panel's decision.
39 The panel's decision shall become final pursuant to this subdivision
40 unless the board finds that the panel made an error of law, or that

1 the panel's decision was based on an error of fact, or that new
2 information should be presented to the board, any of which when
3 corrected or considered by the board has a substantial likelihood
4 of resulting in a substantially different decision upon a rehearing.
5 In making this determination, the board shall consult with the
6 commissioners who conducted the parole consideration hearing.
7 No decision of the parole panel shall be disapproved and referred
8 for rehearing except by a majority vote of the board, sitting en
9 banc, following a public meeting.

10 (c) For the purpose of reviewing the suitability for parole of
11 those inmates eligible for parole under prior law at a date earlier
12 than that calculated under Section 1170.2, the board shall appoint
13 panels of at least two persons to meet annually with each inmate
14 until the time the person is released pursuant to proceedings or
15 reaches the expiration of his or her term as calculated under Section
16 1170.2.

17 (d) It is the intent of the Legislature that, during times when
18 there is no backlog of inmates awaiting parole hearings, life parole
19 consideration hearings, or life rescission hearings, hearings will
20 be conducted by a panel of three or more members, the majority
21 of whom shall be commissioners. The board shall report monthly
22 on the number of cases where an inmate has not received a
23 completed initial or subsequent parole consideration hearing within
24 30 days of the hearing date required by subdivision (a) of Section
25 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless
26 the inmate has waived the right to those timeframes. That report
27 shall be considered the backlog of cases for purposes of this
28 section, and shall include information on the progress toward
29 eliminating the backlog, and on the number of inmates who have
30 waived their right to the above timeframes. The report shall be
31 made public at a regularly scheduled meeting of the board and a
32 written report shall be made available to the public and transmitted
33 to the Legislature quarterly.

34 (e) For purposes of this section, an en banc review by the board
35 means a review conducted by a majority of commissioners holding
36 office on the date the matter is heard by the board. An en banc
37 review shall be conducted in compliance with the following:

38 (1) The commissioners conducting the review shall consider
39 the entire record of the hearing that resulted in the tie vote.

1 (2) The review shall be limited to the record of the hearing. The
2 record shall consist of the transcript or audiotape of the hearing,
3 written or electronically recorded statements actually considered
4 by the panel that produced the tie vote, and any other material
5 actually considered by the panel. New evidence or comments shall
6 not be considered in the en banc proceeding.

7 (3) The board shall separately state reasons for its decision to
8 grant or deny parole.

9 (4) A commissioner who was involved in the tie vote shall be
10 recused from consideration of the matter in the en banc review.

11 (f) Notwithstanding any other provision of law, except as
12 provided in subdivision (g), any prisoner sentenced to a term of
13 imprisonment under Section 1168 who the chief medical officer
14 at the institution where the prisoner is located determines, as
15 provided in this section, suffers from a significant and permanent
16 condition, disease, or syndrome resulting in the prisoner being
17 physically or cognitively debilitated or incapacitated shall be
18 granted medical parole if the Board of Parole Hearings determines
19 that the conditions under which the prisoner would be released
20 would not reasonably pose a threat to public safety.

21 (g) Subdivision (f) shall not apply to any prisoner sentenced to
22 death or life in prison without possibility of parole or to any inmate
23 who is serving a sentence for which parole, pursuant to subdivision
24 (f), is prohibited by any initiative statute. Parole placements and
25 revocations pursuant to subdivision (f) shall be made in accordance
26 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

27 (h) When a physician employed by the Department of
28 Corrections and Rehabilitation who is the primary care provider
29 for an inmate identifies an inmate that he or she believes meets
30 the medical criteria for medical parole specified in subdivision (f),
31 the primary care physician shall recommend to the chief medical
32 officer of the institution where the prisoner is located that the
33 prisoner be referred to the Board of Parole Hearings for
34 consideration for medical parole. Within 30 days of receiving that
35 recommendation, if the chief medical officer concurs in the
36 recommendation of the primary care physician, he or she shall
37 refer the matter to the Board of Parole Hearings, and if the chief
38 medical officer does not concur in the recommendation, he or she
39 shall provide the primary care physician with a written explanation
40 of the reasons for denying the referral.

(i) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for medical parole by contacting the chief medical officer at the prison or the secretary. Within 30 days of receiving the request, the chief medical officer shall, in consultation with the prisoner's primary care physician, make a determination *regarding* whether the prisoner meets the criteria for medical parole as specified in subdivision (f) and, if the chief medical officer determines that the prisoner satisfies the criteria set forth in subdivision (f), he or she shall refer the matter to the Board of Parole Hearings. If the chief medical officer does not concur in the recommendation, he or she shall provide the prisoner or his or her family member or designee with a written explanation of the reasons for denying the application.

(j) The Department of Corrections and Rehabilitation shall complete parole plans for inmates referred to the Board of Parole Hearings for medical parole consideration. The parole plans shall include, but not be limited to, the inmate's plan for residency and medical care.

(k) Notwithstanding any other law, medical parole hearings shall be conducted by two-person panels consisting of at least one commissioner. In the event of a tie vote, the matter shall be referred to the full board for a decision.

(l) Upon receiving a recommendation from a chief medical officer of the department for a prisoner to be granted medical parole pursuant to subdivision (h) or (i), the board, as specified in subdivision (k), shall make an independent judgment regarding whether the conditions under which the inmate would be released pose a reasonable threat to public safety, and make written findings related thereto.

(m) The Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to medical parole supervision pursuant to subdivision (f), including, but not limited to, the requirement that the parolee submit to electronic monitoring. As a further condition of medical parole, pursuant to subdivision (f), the parolee may be required to submit to an examination by a physician for the purpose of diagnosing ~~their~~ *his or her* current medical condition. In the event such an examination takes place, a report of the examination and diagnosis shall be submitted to the board by the examining physician. If the

board determines that the person's medical condition has substantially improved and that the person poses a threat to public safety, the board may revoke the parole and return the person to the custody of the department.

(1) Notwithstanding any other provision of law establishing maximum periods for parole, a prisoner placed on medical parole supervision prior to the earliest possible parole date that the prisoner would otherwise have been released to parole under, shall remain on medical parole, pursuant to subdivision (f), until that earliest possible parole date, at which time the provisions of paragraph (2) shall apply.

(2) At the expiration of the period described in paragraph (1), the parolee shall commence serving that period of parole provided by, and under all other provisions of, ~~Chapter 8 (commencing with Section 3000) of Title 1 of Part 3 of this chapter.~~

(n) The Department of Corrections and Rehabilitation shall, at the time a prisoner is placed on medical parole supervision pursuant to subdivision (f), ensure that the prisoner has applied for any federal entitlement programs for which the prisoner is eligible, and has in his or her possession a discharge medical summary, full medical records, parole medications, and all property belonging to the prisoner that was under the control of the department. Any additional records shall be sent to the prisoner's forwarding address after release to health care-related parole supervision.

~~SEC. 3.— Section 3550 is added to the Penal Code, to read:~~

~~3550.—~~

SEC. 3. Title 2.3 (commencing with Section 3550) is added to Part 3 of the Penal Code, to read:

TITLE 2.3. MEDICAL PAROLE

3550. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), any prisoner sentenced to a term of imprisonment under Section 1170 who the chief medical officer of the institution where the prisoner is located determines, as provided in this section, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated shall be granted medical parole if the Board of Parole Hearings determines

1 that the conditions under which the prisoner would be released
2 would not reasonably pose a threat to public safety.

3 (b) Subdivision (a) shall not apply to any prisoner sentenced to
4 death or life in prison without possibility of parole or to any inmate
5 who is serving a sentence for which parole, pursuant to subdivision
6 (a), is prohibited by any initiative statute. Parole placements and
7 revocations pursuant to subdivision (a) shall be made in accordance
8 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

9 (c) When a physician employed by the Department of
10 Corrections and Rehabilitation who is the primary care provider
11 for an inmate identifies an inmate that he or she believes meets
12 the medical criteria for medical parole specified in subdivision (a)
13 the primary care physician shall recommend to the chief medical
14 officer of the institution where the prisoner is located that the
15 prisoner be referred to the Board of Parole Hearings for
16 consideration for medical parole. Within 30 days of receiving that
17 recommendation, if the chief medical officer concurs in the
18 recommendation of the primary care physician, he or she shall
19 refer the matter to the Board of Parole Hearings, and if the chief
20 medical officer does not concur in the recommendation, he or she
21 shall provide the primary care physician with a written explanation
22 of the reasons for denying the referral.

23 (d) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for medical parole by
26 contacting the chief medical officer at the prison or the secretary.
27 Within 30 days of receiving the request, the chief medical officer
28 shall, in consultation with the prisoner's primary care physician,
29 make a determination *regarding* whether the prisoner meets the
30 criteria for medical parole as specified in subdivision (a) and, if
31 the chief medical officer determines that the prisoner satisfies the
32 criteria set forth in subdivision (a), he or she shall refer the matter
33 to the Board of Parole Hearings. If the chief medical officer does
34 not concur in the recommendation, he or she shall provide the
35 prisoner or his or her family member or designee with a written
36 explanation of the reasons for denying the application.

37 (e) The Department of Corrections and Rehabilitation shall
38 complete parole plans for inmates referred to the Board of Parole
39 Hearings for medical parole consideration. The parole plans shall

1 include, but not be limited to, the inmate's plan for residency and
2 medical care.

3 (f) Notwithstanding any other law, medical parole hearings shall
4 be conducted by two-person panels consisting of at least one
5 commissioner. In the event of a tie vote, the matter shall be referred
6 to the full board for a decision.

7 (g) Upon receiving a recommendation from a chief medical
8 officer of the department for a prisoner to be granted medical parole
9 pursuant to subdivision (c) or (d), the board, as specified in
10 subdivision (f), shall make an independent judgment regarding
11 whether the conditions under which the inmate would be released
12 pose a reasonable threat to public safety, and make written findings
13 related thereto.

14 (h) Notwithstanding any other provision of law, the Division
15 of Adult Parole Operations shall have the authority to impose any
16 reasonable conditions on prisoners subject to medical parole
17 supervision pursuant to subdivision (a), including, but not limited
18 to, the requirement that the parolee submit to electronic monitoring.
19 As a further condition of medical parole, pursuant to subdivision
20 (a), the parolee may be required to submit to an examination by a
21 physician for the purpose of diagnosing their current medical
22 condition. In the event such an examination takes place, a report
23 of the examination and diagnosis shall be submitted to the board
24 by the examining physician. If the board determines that the
25 person's medical condition has substantially improved and that
26 the person poses a threat to public safety, the board may revoke
27 the parole and return the person to the custody of the department.

28 (1) Notwithstanding any other provision of law establishing
29 maximum periods for parole, a prisoner placed on medical parole
30 supervision prior to the earliest possible parole date that the
31 prisoner would otherwise have been released to parole under, shall
32 remain on medical parole, pursuant to subdivision (a), until that
33 earliest possible parole date, at which time the provisions of
34 paragraph (2) shall apply.

35 (2) At the expiration of the period described in paragraph (1),
36 the parolee shall commence serving that period of parole provided
37 by, and under all other provisions of, Chapter 8 (commencing with
38 Section 3000) of Title 1 of Part 3.

39 (i) The Department of Corrections and Rehabilitation shall, at
40 the time a prisoner is placed on medical parole supervision pursuant

1 to subdivision (a), ensure that the prisoner has applied for any
2 federal entitlement programs for which the prisoner is eligible,
3 and has in his or her possession a discharge medical summary, full
4 medical records, parole medications, and all property belonging
5 to the prisoner that was under the control of the department. Any
6 additional records shall be sent to the prisoner's forwarding address
7 after release to health care-related parole supervision.

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